FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-1310

HELEN A. ROBBINS,

Appellant,

v.

KENJI R. KERNS,

Appellee.

On appeal from the Circuit Court for Wakulla County.
Kevin J. Carroll, Judge.

December 10, 2020

KELSEY, J.

These parties are the parents of a preschooler. The father has custody of two older children from two other relationships. The mother raises six issues challenging a final judgment on timesharing and child support issues. After carefully considering each issue, we reverse as to the prospective timesharing change. We also reverse as to credit for support of the father's other children, and remand for further proceedings to calculate child support. We affirm as to the remaining issues because they involve disputed issues of fact with evidence going both ways. The trial court made permissible choices within its discretion.

1. Prospective Timesharing Change.

The trial court gave the mother 60% of timesharing. The court also ruled that timesharing will change to 50/50 automatically when the child enters kindergarten, approximately two years after this judgment. This automatic prospective change was error. This Court has held that "[t]rial courts may not engage in a 'prospective-based analysis' when modifying a time-sharing schedule that attempts to anticipate what the future best interests of a child will be." *Hughes v. Binney*, 285 So. 3d 996, 998 (Fla. 1st DCA 2019) (*quoting Arthur v. Arthur*, 54 So. 3d 454, 458–59 (Fla. 2010)); *see also Preudhomme v. Preudhomme*, 245 So. 3d 989, 990 (Fla. 1st DCA 2018) (affirming present timesharing modification but reversing future timesharing modification and requiring trial court to delete the portion of its order addressing future events).

Courts must determine a child's best interests based on circumstances that exist at the final hearing; "i.e., a present-based analysis." *Arthur*, 54 So. 3d at 459. A court cannot assume that present circumstances will continue to persist, much less for two years. *Id.*; *see also Sylvester v. Sylvester*, 992 So. 2d 296, 297 (Fla. 1st DCA 2008) ("It is difficult enough to determine the present emotional and psychological needs of a child; it is impossible to speculate what those needs will be in two years."). Because the trial court erroneously determined the child's future course prematurely, we reverse this portion of the final judgment. We note, as did the supreme court in *Arthur*, that the parents can revisit this issue at the appropriate time based on then-existing circumstances. 54 So. 3d at 460 n.2.

2. Reduction of Father's Gross Income.

The trial court also erred in calculating the father's child support obligation. The father has custody of his two older children, and has no court-ordered support obligation for them. Nevertheless, the trial court identified how much child support the father likely would be paying for his two older children *if* he were obligated to pay such support, and deducted it from the father's gross income. The court misapplied *Speed v. Florida Department of Revenue ex rel. Nelson*, 749 So. 2d 510 (Fla. 2d DCA 1999). Under *Speed*, a court calculating child support can first deduct from the

parent's gross income the amount of court-ordered support actually spent on other children. *Speed*, 749 So. 2d at 511; *see* §61.30(3)(f), Fla. Stat. (2019) (listing allowable deductions from gross income, including "[c]ourt-ordered support for other children which is actually paid"). In accounting terms, the *Speed* "credit" is a deduction from gross income under section 61.30(3)(f). *See Speed*, 749 So. 2d at 511 ("Reversed and remanded for the trial court to enter an order deducting from Mr. Speed's gross income the child support he paid for the two later-born children."). The *Speed* deduction from gross income was not available here, because the father has custody of his two other children and is not paying court-ordered support for them. The trial court had no authority to reduce the father's gross income for hypothetical child support of his two older children.

However, we reject the mother's argument that this means the father gets no credit for the expenses of his two older children. The trial court had discretion to recognize those expenses under another provision of the child support guidelines statute. The trial court may make "[a]ny other adjustment [to the guideline support amount] that is needed to achieve an equitable result." § 61.30(11)(a)11., Fla. Stat. *See Fla. Dep't of Revenue ex rel. Wind v. Cochran*, 253 So. 3d 731, 734–35 (Fla. 1st DCA 2018) (recognizing the difference between the *Speed* deduction and the equitable credit available as explained in *Fla. Dep't of Revenue ex rel. Marshall v. Smith*, 716 So. 2d 333 (Fla. 2d DCA 1998)).

In contrast to the deduction from gross income under *Speed*, the *Smith* credit is a true credit because it is deducted from the basic support obligation. *See Smith*, 716 So. 2d at 335 (distinguishing between a deduction from gross income of amounts actually spent and an equitable adjustment of child support based on amounts that would hypothetically be spent). While the trial court incorrectly reduced the father's gross income by a hypothetical amount, the court was within its discretion to recognize these expenses, and it has discretion to credit them to the father's basic support obligation as a "Credit for Child Care." *See Cochran*, 253 So. 3d at 734–35. Because the trial court adopted the *Speed* approach and did not perform this equitable credit analysis, we reverse and remand for further proceedings on the credit issue.

AFFIRMED in part, REVERSED in part, and REMANDED for further proceedings.

ROBERTS and JAY, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

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Kenji R. Kerns, pro se, Appellee.